



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

April 12, 2006

REGISTERED MAIL

RB 670 437 616 US

Mr. Leon Johnson
Owner and Representative of 9th Avenue Property Coalition
17010 9th Avenue SE
Mill Creek, WA 98012

Dear Mr. Johnson:

RE: Water Quality Certification Order #3174 for U.S. Army Corps of Engineers (Corps) Reference #200201251, Place Fill in 0.6 acre Wetland, Drain 4.7 acres of Wetlands, Excavate 0.03 acre Wetlands, and Rehabilitate 5.9 acres of Wetlands, City of Mill Creek, Snohomish County, Washington

On July 14, 2004, you submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed flood protection project. On July 8, 2005, you submitted a request to withdraw and re-apply for a 401 Certification in order to extend the review period for this project, with no changes to the original JARPA. The project proposes to place fill in 0.6 acre wetland for construction of a setback levee, drain 4.7 acres of wetlands behind the levee (as a result of the levee), excavate 0.03 acre wetlands to widen a ditch, and rehabilitate 5.9 acres of wetlands. The U.S. Army Corps of Engineers issued a public notice on September 24, 2004 for the proposed project and Ecology issued a public notice on July 22, 2005.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.



Mr. Leon Johnson
April 12, 2006
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If you have any questions, please contact Rebekah Padgett at 425-649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in black ink, appearing to read 'Geoff Tallent', with a long horizontal flourish extending to the right.

Geoff Tallent
Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:rrp:cja

Enclosure

cc: John Pell, U.S. Army Corps of Engineers
Ginger Holser, Washington State Department of Fish and Wildlife
William Shiels, Talasaea Consultants, LLC
Tom Rogers, City of Mill Creek
Lawrence Allen

e-cc: Penny Keys – HQ
Loree' Randall – HQ
Erik Stockdale, Senior Wetland Specialist/Unit Supervisor

IN THE MATTER OF GRANTING A)	ORDER #3174
WATER QUALITY)	Corps Reference No. #200201251
CERTIFICATION TO)	Place Fill in 0.81 acres of Wetlands, Drain 4.02
Leon Johnson, Owner and)	acres of Wetlands, Rehabilitate 6.36 acres of
Representative of 9th Avenue Property)	Wetlands, and Create/Establish 0.9 acres of
Coalition)	Wetlands, City of Mill Creek, Snohomish
in accordance with 33 U.S.C. 1341)	County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)	
90.48.260 and Chapter 173-201A WAC)	

TO: Mr. Leon Johnson
Owner and Representative of 9th Avenue Property Coalition
17010 9th Avenue SE
Mill Creek, WA 98012

On July 14, 2004, you submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. On July 8, 2005, you submitted a request to withdraw and re-apply for a 401 Water Quality Certification in order to extend the review period for this project, with no changes to the original JARPA. A public notice regarding the request was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on September 24, 2004, and by Ecology on July 22, 2005.

The proposed flood protection project entails placement of fill in 0.81 acres of wetlands for construction of a setback levee, and draining 4.02 acres of wetlands behind the levee (as a result of the levee). This will be mitigated through the rehabilitation of 6.36 acres of wetlands and creation/establishment of 0.9 acres of wetlands. The project is located in the City of Mill Creek at 17010 9th Avenue SE, 17120 9th Avenue SE, 17108 9th Avenue SE, and 17226 9th Avenue SE, Section 7, Township 27 North, Range 5 East, WRIA #8.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and

3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term "Applicant" shall mean Leon Johnson, Owner and Representative of 9th Avenue Property Coalition, and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #3174 and Corps Reference #200201251.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on July 14, 2004. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
- A4. Within 30 days of receipt of an updated JARPA Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A5. This Order shall be rescinded if the US Army Corps of Engineers does not issue an individual 404 permit.

- A6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- A7. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
- A8. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A9. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A10. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.
- A11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
- A12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

B. Water Quality

- B1. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification

shall absolve the Applicant from liability for contamination and any subsequent cleanup or surface waters or sediments occurring as a result of project construction or operations.

C. Project Mitigation for Wetlands:

- C1. Impacts to 4.83 acres of wetlands (resulting from placement of fill in 0.81 acres, and drainage of 4.02 acres of wetlands) shall be mitigated through rehabilitation of 6.36 acres of wetlands and creation/establishment of 0.9 acres of wetlands. These measures are described in the following document, except as modified by this Certification and Order, and including any approved revisions:
- a. *Sensitive Areas Report and Wetland Mitigation Plan for the Johnson - Multi-parcel Mill Creek Site*, revised 17 January 2006, prepared by Talasaea Consultants, Inc. [hereinafter referred to as the "Mitigation Plan"]. The mitigation action is conceptually depicted on Sheets W1.0-W3.1 in Appendices F & G of the Mitigation Plan.
- C2. In addition to mitigation measures described in the above-referenced documents, the following requirements shall be conditions for all mitigation sites:
- a. Pre-construction Meeting: The Applicant's wetland ecologist assigned to oversee wetland mitigation implementation shall be present at the pre-construction meeting for the project.
 - b. Timing: The wetland mitigation plan shall be implemented concurrently with or within one growing season following the site construction for the development.
 - c. Record Report and Drawings: A report documenting the final design of the mitigation project areas shall be prepared when site construction and planting is completed. The report shall include the following:
 - Vicinity map showing site access;
 - Drawings that clearly identify the boundaries of the mitigation areas;
 - The installed planting scheme showing densities, sizes, and locations of plants, as well as plant sources and the time of planting;
 - Photographs of the area taken from permanent reference points;
 - Locations of photo-points, sampling and monitoring sites; and
 - An analysis of any changes to the mitigation plan that occurred during construction.

A copy of the Record Report shall be sent to Ecology's 401/CZM Federal Project Manager within 60 days of completing construction, and in no case later than December 31, 2006, unless approval is obtained from Ecology. The project monitoring period shall commence with Ecology's acceptance of the Record Report.

- d. Field Supervision: The wetland mitigation implementation shall be field-supervised by a qualified wetland ecologist to ensure plants are appropriately placed.
- e. Permanent Protection: The Applicant shall provide documentation showing the means of permanent protection for the mitigation sites (such as property deed showing County ownership, or similar) to Ecology's 401/CZM Federal Project Manager within 60 days of completing construction, and in no case later than December 31, 2006.
- f. Performance Standards: The performance standards for the wetland mitigation shall be as listed in the Mitigation Plan. The performance standards specify how the goals and objectives of the mitigation plan are to be measured. The Mitigation Plan details nine objectives for the mitigation plan, with specific performance standards for each.
- g. Monitoring: Monitoring to ensure that the project performance standards are met shall be performed as described in the Mitigation Plan. In addition, all mitigation monitoring shall take place over a period of ten (10) years, with monitoring performed in years 1, 2, 3, 5, 7 and 10. **Copies of all monitoring reports shall be submitted to Ecology's 401/CZM Federal Project Manager at 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452, as well as to the U.S. Army Corps of Engineers.**
- h. Maintenance: Maintenance of the wetland mitigation sites is necessary to ensure that the required performance standards are met. Maintenance shall be performed as described in the Mitigation Plan. Irrigation may be necessary from June through mid-October for the first growing season following plant installation, to ensure a minimum of 1 inch of water per week. Irrigation may not be necessary on those weeks where rainfall at the site exceeds 1 inch per week.
- i. Contingency Measures: The Applicant is responsible for the success of the mitigation measures. A Contingency Plan may be required as described in the Mitigation Plan under Section 10.0.

- j. Year 10 Rating: The 2004 Washington State Wetlands Rating System shall be applied to the mitigation area at the end of the 10-year monitoring period to determine the mitigated wetland category.
- k. Year 10 Delineation: The mitigated wetland shall be delineated using the 1997 Washington State Wetlands Identification and Delineation Manual (or as updated) at the end of the 10-year monitoring period to determine the actual area of wetlands rehabilitated and created.

D. Stormwater Management

- D1. Applicant shall implement and comply with the Stormwater General Permit for Construction Activity #SO3-006401.

E. Construction

- E1. Prior to clearing and grading in or near wetlands, the wetlands to remain undisturbed shall be protected from construction impacts. Bright orange construction fencing shall be installed prior to site clearing to mark the edge of the existing wetlands and stream channels to be protected. All project staff shall be trained to recognize the construction fencing that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be altered.
- E2. Construction Stormwater and Erosion Control: Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (*e.g.*, a perimeter erosion control silt fence, etc.), shall be in place before starting clearing, filling, and grading work at the site, and shall also comply with all requirements of the applicable NPDES Construction Stormwater Permit.
- E3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- E4. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.

F. Emergency/Contingency Measures

- F1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project.
- F2. The facility shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- F3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
- F4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
 - a. Cease operations at the location of the violation.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
 - d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
- F5. Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.
- F6. In the event of finding distressed or dying fish, the Applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the Applicant is instructed by Ecology or WDFW on what to do with them. Ecology or WDFW may require analyses of these samples before allowing the work to resume.

- F7. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.

G. Timing Requirements

- G1. This Order is valid until all compliance requirements in this document have been met.
- G2. In-water work shall be subject to timing limitations imposed by Washington Department of Fish and Wildlife (WDFW). Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected

H. Notification Requirements

- H1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction, and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #200500763, Order #3174, can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

I. Appeal Process

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated April 12, 2006 at Bellevue, Washington.



Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**LEON JOHNSON ET AL.
Water Quality Certification Order #3174**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #3174 Section 401 Water Quality Certification for the Leon Johnson et al. Project. I have also read and understand all permits, plans, documents, and approvals associated with the Leon Johnson et al. Project referenced in this order.

Signature

Date

Title

Company